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No. 91-636

Supreme Court, U.S.

FILED

FEB 14 1992

OFFICE OF THE CLERK

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1991

FORT GRATIOT SANITARY LANDFILL, INC.,  
*Petitioner,*

-vs.-

MICHIGAN DEPARTMENT OF NATURAL RESOURCES, *et al.*,  
*Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SIXTH CIRCUIT

**JOINT APPENDIX**

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*(Counsel continued on inside cover)*

Petition for Certiorari filed October 12, 1991  
Certiorari granted January 10, 1992

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St. Clair County Metropolitan Planning  
Commission and Gordon Ruttan, its  
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Planning Committee and Peg Clute, its  
Chairperson*

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its Director*

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The following opinions, decisions, judgments and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the Petition for Certiorari:

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**Relevant Docket Entries Of The  
United States District Court For The  
Eastern District Of Michigan Southern Division  
Case No. 89-CV-30015PH**

<b>DATE</b>	<b>DOCKET ENTRY</b>
3/13/89	COMPLAINT filed.
4/10/89	MOTION by defendants St. Clair County Health Department, and John B. Parsons, Director of St. Clair County Health Department, St. Clair County Metropolitan Planning Commission, and Gordon Ruttan, its Director, St. Clair County Solid Waste Planning Committee and Peg Clute, its Chairperson to dismiss complaint with brief, exhibits, notice of hearing without date, and proof.
4/17/89	MOTION by defendant David Hales, defendant Michigan Department of Natural Resources to dismiss complaint with brief, notice of hearing without date, and proof.
4/24/89	RESPONSE brief by plaintiff to motion to dismiss complaint by Michigan Department of Natural Resources, David Hales, motion to dismiss complaint by St. Clair County defendants, with exhibit.
4/24/89	MOTION by plaintiff for summary judgment with brief, exhibits, notice of hearing without date, and proof.
5/3/89	REPLY brief by defendants St. Clair County Health Department, and John B. Parsons, Di-

rector of St. Clair County Health Department, St. Clair County Metropolitan Planning Commission, and Gordon Ruttan, its Director, St. Clair County Solid Waste Planning Committee and Peg Clute, its Chairperson to motion response by Bill Kettlewell, Inc. and in support of St. Clair County defendants' motion to dismiss complaint, with proof.

- 5/15/89 RESPONSE brief by defendant David Hales, defendant Michigan Department of Natural Resources to plaintiff's motion for summary judgment, with proof.
- 6/2/89 MEMORANDUM opinion and order by Judge James Harvey denying motion to dismiss complaint by Michigan Department of Natural Resources, David Hales, denying motion to dismiss complaint by St. Clair County defendants, with proof.
- 6/2/89 SCHEDULE: hearing on plaintiff's motion for summary judgment set for 9:00 a.m. on 6/27/89 before Judge James Harvey.
- 6/12/89 RESPONSE by St. Clair County defendants to plaintiff's motion for summary judgment with brief and proof.
- 6/19/89 ANSWER by defendants St. Clair County Health Department, and John B. Parsons, Director of St. Clair County Health Department, St. Clair County Metropolitan Planning Commission, and Gordon Ruttan, its Director, St. Clair County Solid Waste Planning Committee and Peg Clute, its Chairperson to complaint, with proof.

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- 6/19/89 ANSWER by defendant David Hales, defendant Michigan Department of Natural Resources to complaint, with proof.
- 6/26/89 REPLY brief by plaintiff to motion response by St. Clair County defendants, motion response by Michigan Department of Natural Resources, David Hales.
- 6/27/89 HEARING held on plaintiff's motion for summary judgment—Judge James Harvey—Court Reporter: Jayne Tinney-Jones; motion under advisement.
- 7/5/89 AMENDED answer by defendants St. Clair County Health Department, and John B. Parsons, Director of St. Clair County Health Department, St. Clair County Metropolitan Planning Commission, and Gordon Ruttan, its Director, St. Clair County Solid Waste Planning Committee and Peg Clute, its Chairperson to complaint, with proof.
- 10/26/89 LETTER by counsel for plaintiff regarding recent decision of the U.S. Court of Appeals for the Fourth Circuit, with copy of same.
- 10/30/89 LETTER by counsel for defendant David Hales, defendant Michigan Department of Natural Resources responding to letter to Court from counsel for plaintiff.
- 11/16/89 LETTER by counsel for defendants St. Clair County Health Department, and John B. Parsons, Director of St. Clair County Health Department, St. Clair County Metropolitan



Planning Commission, and Gordon Ruttan, its Director, St. Clair County Solid Waste Planning Committee and Peg Clute, its Chairperson responding to letter to Court from counsel for plaintiff.

- 3/2/90 MEMORANDUM opinion and order by Judge James Harvey denying plaintiff's motion for summary judgment with proof of mailing.
- 3/8/90 JUDGMENT entered by Judge James Harvey that plaintiff take nothing and the case is dismissed.
- 3/19/90 APPEAL by plaintiff of order to United States Court of Appeals.
- 3/22/90 CERTIFIED copy of appeal by plaintiff and docket transmitted to United States Court of Appeals.
- 4/19/90 RECORD of appeal by plaintiff transmitted to United States Court of Appeals—appeal case #90-1361.
- 5/22/90 FINAL transcript of proceedings taken on 6/27/89 for appeal by plaintiff.
- 5/23/90 RECORD of appeal by plaintiff transmitted to United States Court of Appeals—appeal case #90-1361—number of transcripts: one.
- 5/3/91 SLIP opinion from United States Court of Appeals affirming the decision of the District Court—appeal case #90-1361—record not returned.



JA5

- 8/12/91 RECORD of appeal returned from United States Court of Appeals—appeal case #90-1361.
- 8/12/91 MANDATE from United States Court of Appeals affirming the decision of the District Court—appeal case #90-1361—record returned.
- 8/12/91 SLIP opinion from United States Court of Appeals affirming the decision of the District Court—appeal case #90-1361.

**Relevant Docket Entries Of  
The United States Court Of Appeals  
For The Sixth Circuit  
Appeal No. 90-1361**

<b>DATE</b>	<b>DOCKET ENTRY</b>
3/26/90	APPEAL by Bill Kettlewell Excavating, Inc. from decision of the United States District Court for the Western District of Michigan filed.
6/12/90	BRIEF of plaintiff-appellant dated 6/11/90 filed.
7/16/90	BRIEF of defendant-appellees Michigan Department of Natural Resources and David Hales, Director, dated 7/13/90 filed.
7/16/90	BRIEF of defendant-appellees St. Clair County Health Department, and John B. Parsons, Director of St. Clair County Health Department, St. Clair County Metropolitan Planning Commission, and Gordon Ruttan, its Director, St. Clair County Solid Waste Planning Committee and Peg Clute, its Chairperson, dated 7/13/90 filed.
8/2/90	REPLY brief of plaintiff-appellant dated 8/1/90 filed.
10/3/90	Oral argument date set for AM 11/29/90 in court room 836. Notice of argument sent to counsel.

- 11/29/90 CAUSE ARGUED by Robert A. Fineman for plaintiff-appellant, James E. Riley for defendant-appellees Michigan Department of Natural Resources and David Hales, Lawrence R. Ternan for defendant-appellees St. Clair County Health Department, John B. Parsons, St. Clair Metropolitan Planning Commission, Gordon Ruttan, St. Clair County Solid Waste Planning Committee and Peg Clute before Judges Wellford, Norris, Forester.
- 4/8/91 ADDITIONAL CITATION filed by Daniel P. Perk for plaintiff-appellant. Certificate of service dated 4/4/91.
- 4/22/91 ADDITIONAL CITATION filed by Lawrence R. Ternan for defendant-appellees St. Clair County Health Department, John B. Parsons, St. Clair County Metropolitan Planning Commission, Gordon Ruttan, St. Clair County Solid Waste Planning Committee and Peg Clute. Certificate of service dated 4/18/91.
- 5/1/91 OPINION filed: AFFIRMED, decision for publication pursuant to local rule 24. Alan E. Norris, Circuit Judge, Harry W. Wellford, Authoring Judge, Karl S. Forester, District Judge.
- 5/1/91 JUDGMENT: AFFIRMED.
- 5/15/91 PETITION of plaintiff-appellant for rehearing with a suggestion for rehearing en banc and proof dated 5/14/91 filed.

- 6/14/91    RESPONSE of defendant-appellees Michigan Department of Natural Resources and David Hales, director to appellant's petition for rehearing dated 6/13/91 filed.
  
- 6/14/91    RESPONSE of defendant-appellees St. Clair County Health Department, John B. Parsons, St. Clair County Metropolitan Planning Commission, Gordon Ruttan, St. Clair County Solid Waste Planning Committee and Peg Clute to appellant's petition for rehearing dated 6/13/91 filed.
  
- 6/19/91    ADDITIONAL CITATION filed by Robert A. Fineman for plaintiff-appellant Bill Kettlewell Excavating, Inc. updating en banc petition. Certificate of service date 6/18/91.
  
- 6/27/91    TENDERED: response of appellee to 6/19/91 citation updating en banc petition from Lawrence R. Ternan for defendant-appellees St. Clair County Health Department, John B. Parsons, St. Clair County Metropolitan Planning Commission, Gordon Ruttan, St. Clair County Solid Waste Planning Committee and Peg Clute.
  
- 7/16/91    ORDER filed denying petition for en banc rehearing. Alan E. Norris, Circuit Judge, Harry W. Wellford, Senior Judge, Karl S. Forester, District Judge.
  
- 8/1/91    MANDATE ISSUED with no cost taxed.

JA9

- 10/29/91 United States Supreme Court notice filed regarding petition for writ of certiorari filed—Fort Gratiot Sanitary Landfill, Inc., petitioner. Filed in the Supreme Court on 10/15/91, Supreme Court case number: 91-636.
- 1/17/92 United States Supreme Court order filed granting petition for writ of certiorari. Filed in the Supreme Court on 1/10/92.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

---

Case No. ....

HON.

BILL KETTLEWELL EXCAVATING, INC., d/b/a FORT  
GRATIOT SANITARY LANDFILL, a Michigan corporation,  
*Plaintiff,*

v.

MICHIGAN DEPARTMENT OF NATURAL RESOURCES; DAVID  
HALES, Director of Michigan Department of Natural  
Resources; ST CLAIR COUNTY HEALTH DEPARTMENT;  
and JON B. PARSONS, Director of St. Clair County  
Health Department; ST. CLAIR COUNTY METROPOLITAN  
PLANNING COMMISSION, and GORDON RUTTAN, its  
Director; ST CLAIR COUNTY SOLID WASTE PLANNING  
COMMITTEE and PEG CLUTE, its Chairperson,  
*Defendants.*

---

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## **Complaint for Declaratory and Injunctive Relief**

Plaintiff Bill Kettlewell Excavating, Inc. d/b/a Fort Gratiot Sanitary Landfill, by its attorneys, Honigman Miller Schwartz and Cohn, for its Complaint says:

### **NATURE OF THE ACTION**

1. Plaintiff brings this action pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 USC §2201, seeking a declaration that Section 13a of Act No. 641 of the Public Acts of 1978, as amended by Act No. 475 of 1988, being Section 299.413a of the Michigan Compiled Laws, both on its face and as applied, is violative of the Commerce Clause of the United States Constitution, U.S. Const., Art. I § 8, Cl. 3 and is violative of the "takings" provisions under the United States Constitution, U.S. Const., Amend V. Plaintiff also requests injunctive relief, enjoining the enforcement of MCLA 299.413a.

### **JURISDICTION**

2. This Court has jurisdiction over this matter pursuant to 28 USC § 1331.

### **PARTIES**

3. Plaintiff Bill Kettlewell Excavating, Inc., d/b/a Fort Gratiot Sanitary Landfill ("Kettlewell") is a Michigan corporation in good standing and is currently doing business under the registered assumed name of Fort Gratiot Sanitary Landfill.

4. Defendants Michigan Department of Natural Resources ("MDNR") and David Hales, Director of MDNR,



are charged by law with the responsibility to administer and enforce the Solid Waste Management Act (hereinafter "Act 641"), MCL 299.401 *et seq.*

5. Defendant St. Clair County Health Department ("St. Clair"), under defendant Jon B. Parson, Director, is a Division of the County of St. Clair and, pursuant to MCL 299.401 *et seq.*, is the designated agent of the MDNR for purposes of enforcing the rules and provisions of Act 641.

6. Defendant St. Clair County Metropolitan Planning Commission is an agency of the County of St. Clair, and designated by the County of St. Clair as the agency responsible for the preparation of the St. Clair County Solid Waste Management Plan. Defendant Gordon Ruttan is its director.

7. Defendant St. Clair County Solid Waste Planning Committee is a committee appointed pursuant to Act 641, MCLA 299.401 *et seq.*, and is mandated pursuant to statute and rules to assist in the Solid Waste Management Plan for St. Clair County. Defendant Peg Clute is the chairperson of said committee.

#### COUNT I

8. Kettlewell incorporates by reference herein its allegations in Paragraphs 1-7.

9. Kettlewell, under its assumed name, operates a Type II solid waste sanitary landfill located in Fort Gratiot Township in St. Clair County, Michigan. This landfill is known as the Fort Gratiot Sanitary Landfill and has been owned and operated by Kettlewell since 1971.

10. The Fort Gratiot Sanitary Landfill is currently operated by Kettlewell under a license issued by the MDNR on September 1, 1987 pursuant to the requirements of Act 641. Pursuant to this license, Kettlewell is and has been authorized to dispose of solid waste as defined by Act 641, MCL 299.407, at the Fort Gratiot Sanitary Landfill site.

11. Kettlewell has intended to dispose of solid waste originating from outside the State of Michigan. The out-of-state waste to be disposed of by Kettlewell will be no different than in-state waste currently disposed of at the Fort Gratiot Sanitary Landfill.

12. On or about December 27, 1988, the Governor of the State of Michigan signed into law, effective immediately, legislation amending Act 641 to add Section 13a and to amend Section 30(2):

Sec. 13a A Person shall not accept for disposal solid waste that is not generated in the county in which the disposal area is located unless the acceptance of solid waste that is not generated in the county is explicitly authorized in the approved county solid waste management plan.

\* \* \*

Sec. 30. (2) In order for a disposal area to serve the disposal needs of another county, state, or country, the service must be explicitly authorized in the approved solid waste management plan of the receiving county. With regard to inter-county service within Michigan, the service must also be explicitly authorized in the exporting county's solid waste management plan.

13. The newly enacted legislation, both on its face and in effect, imposes an absolute ban on the disposal of out-of-state waste without county approval. Neither the newly enacted legislation nor any other provision or rule under Act 641 contain any standards or criteria for the grant or denial of such approval.

14. Any person who violates Act 641 or any of its provisions is subject to a civil fine of not more than \$10,000 for each day of violation and criminal prosecution pursuant to MCL 299.433 and 299.436.

15. MDNR and St. Clair have, by prior legal action, indicated an intention not to permit Kettlewell to dispose of any solid waste originating from outside the State of Michigan at the Fort Gratiot Sanitary Landfill, and Kettlewell is, therefore, threatened with enforcement of MCL 299.413a and 299.430(2) and would be subject to civil fines and criminal prosecution if it were to dispose of any solid waste originating from outside the State of Michigan, at the Fort Gratiot Sanitary Landfill.

16. Solid waste is an article of interstate commerce and Sections 13a and 30(2) of Act 641 are violative of the Commerce Clause of the United States Constitution because they create an impermissible burden on interstate commerce.

WHEREFORE, Kettlewell respectfully prays that this Court:

- A. Enter an order declaring Sections 13a and 30(2) of Act 641 unconstitutional to the extent that they pertain to disposal of waste from outside the State of Michigan;

- B. Enter an order permanently enjoining the enforcement of Sections 13a and 30(2) of Act 641 in a manner that prevents Kettlewell from disposing of out-of-state waste at the Fort Gratiot Sanitary Landfill; and
- C. Grant such further and additional relief as the Court deems just and appropriate.

COUNT II

17. Kettlewell incorporates by reference herein its allegations in Paragraphs 1-16.

18. On or about February 13, 1989, Kettlewell submitted an application to Defendants St. Clair County Metropolitan Planning Commission and St. Clair County Solid Waste Planning committee, requesting authorization for Fort Gratiot Sanitary Landfill to accept for disposal 1750 tons of solid waste per day, including out-of-state waste. In the application, Kettlewell also guaranteed and agreed to reserve sufficient space to handle all St. Clair County generated waste for the next 20 years.

19. Kettlewell's application has been rejected based solely on Defendants' stated policy to prohibit the disposal of all out-of-county waste, including out-of-state waste, within the County of St. Clair.

20. The disposal of solid waste as contemplated and applied for by Kettlewell would not interfere with implementation of the St. Clair County waste management plan, nor impair nor unreasonably impact the County's landfill capacity or its ability to provide solid waste disposal for the County and its residents:

(a) Even if all projected in-county solid waste were disposed of in the Smith's Creek landfill owned by the County, the remaining capacity of that landfill would not be reached for 15-16 years, without regard to what use, if any, was being made of the Kettlewell landfill.

(b) If the Kettlewell landfill were required to accept all of St. Clair County's projected solid waste needs for the next 20 years (as guaranteed and agreed in the application), substantial amounts of additional solid waste could still be disposed of in the Kettlewell landfill without reaching its capacity during the 20 year period or beyond. In addition, the entire capacity of the county landfill would remain available for an additional 15-16 years.

21. Defendants' rejection of Kettlewell's application imposes an absolute prohibition on the disposal of any out-of-state waste under the statute and, therefore, violates the Commerce Clause of the United States Constitution:

(a) Such application of the statute discriminates against out-of-state waste;

(b) Such application of the statute is arbitrary, unreasonable and impermissibly burdens interstate commerce; and

(c) Such application of the statute exceeds and is unrelated to any permissible protection of local interests.

WHEREFORE, Kettlewell respectfully prays that this Court:

- A. Enter an order declaring Sections 13a and 30(2) of Act 641 unconstitutional to the extent that they are applied in a manner that prohibits Kettlewell from disposing of any out-of-state waste;
- B. Enter an order permanently enjoining the enforcement of Sections 13a and 30(2) of Act 641 in a manner that prevents Kettlewell from disposing of out-of-state waste at the Fort Gratiot Sanitary Landfill; and
- C. Grant such further and additional relief as the Court deems just and appropriate.

COUNT III

22. Kettlewell incorporates by reference herein its allegations in paragraph 1-21 of the Complaint.

23. The Fort Gratiot Sanitary Landfill is owned by Kettlewell and is used solely and exclusively for the purpose of disposing of solid waste.

24. Application of Sections 13a and 30(2) of Act 641 in a manner that prevents Kettlewell from disposing of any out-of-state waste at the Fort Gratiot Sanitary Landfill is unreasonable, confiscatory, and constitutes an unconstitutional "taking" of Kettlewell's property without compensation in violation of the United States and Michigan Constitutions, U.S. Const., Amend. V; Mich. Const. 1963, Art. 10, § 2.

WHEREFORE, Kettlewell respectfully prays that this Court:

- A. Enter an order declaring Sections 13a and 30(2) of Act 641 unconstitutional to the



extent that they are applied in a manner that prohibits Kettlewell from disposing of any out-of-state waste;

- B. Enter an order permanently enjoining the enforcement of Sections 13a and 30(2) of Act 641 in a manner that prevents Kettlewell from disposing of out-of-state waste at the Fort Gratiot Sanitary Landfill; and
- C. Grant such further and additional relief as the Court deems just and appropriate.

HONIGMAN MILLER SCHWARTZ  
AND COHN

By: /s/

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LUCE, HENDERSON, BANKSON  
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CURRIER

By: /s/

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Attorneys for Plaintiff

Bill Kettlewell Excavating, Inc.

d/b/a Fort Gratiot Sanitary Landfill

Dated: March 13, 1989



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

---

Case No. 89-CV-30015PH

HON. JAMES HARVEY

BILL KETTLEWELL EXCAVATING, INC., d/b/a FORT  
GRATIOT SANITARY LANDFILL, a Michigan corporation  
*Plaintiff,*

v.

MICHIGAN DEPARTMENT OF NATURAL RESOURCES; DAVID  
HALES, Director of Michigan Department of Natural  
Resources; ST. CLAIR COUNTY HEALTH DEPARTMENT;  
and JON B. PARSONS, Director of St. Clair County  
Health Department; ST. CLAIR COUNTY METROPOLITAN  
PLANNING COMMISSION, and GORDON RUTTAN, its  
Director; ST CLAIR COUNTY SOLID WASTE PLANNING  
COMMITTEE and PEG CLUTE, its Chairperson,  
*Defendants.*

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**Plaintiff's Motion for Summary Judgment**

Plaintiff Bill Kettlewell Excavating, Inc., d/b/a Fort Gratiot Sanitary Landfill ("Kettlewell"), by its attorneys, Honigman Miller Schwartz and Cohn, hereby moves the Court to grant final summary judgment in its favor and against Defendants Michigan Department of Natural Resources and David Hales, Director of Michigan Department of Natural Resources and to enter an Order:

1. Declaring sections 13a and 30(2) of MCL 299.401 *et seq.* ("Act 641") unconstitutional to

the extent that they pertain to disposal of waste from outside the State of Michigan; and

2. Permanently enjoining the enforcement of sections 13a and 30(2) of Act 641 in a manner that prevents Kettlewell from disposing of out-of-state waste at the Fort Gratiot Sanitary Landfill;

Alternatively, Kettlewell requests this Court to grant final summary judgment in its favor and against Defendants St. Clair County Health Department, Jon B. Parsons, Director of St. Clair County Health Department, St. Clair County Metropolitan Planning Commission, and Gordon Ruttan, its Director, St. Clair County Solid Waste Planning Committee and Peg Clute, its Chairperson and to enter and Order:

1. Declaring sections 13a and 30(2) unconstitutional to the extent that they are applied in a manner that prohibits Kettlewell from disposing of any out-of-state waste at the Fort Gratiot Sanitary Landfill; and
2. Permanently enjoining the application of sections 13a and 30(2) of Act 641 in a manner that prevents Kettlewell from disposing of out-of-state waste at the Fort Gratiot Sanitary Landfill.

Kettlewell further requests this Court to grant such further or additional relief as the Court deems just or appropriate.

In support of this Motion, Kettlewell relies on Rule 56 of the Federal Rules of Civil Procedure and the attached Brief in Support of Motion for Summary Judgment.

JA21

Respectfully submitted,

HONIGMAN MILLER SCHWARTZ  
AND COHN

Dated: April 21, 1989

By: /s/

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And

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CURRIER

By: /s/

David R. Heyboer (P-27975)

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

---

Case No. 89-CV-30015PH

HON. JAMES HARVEY

BILL KETTLEWELL EXCAVATING, INC., d/b/a FORT  
GRATIOT SANITARY LANDFILL, a Michigan corporation  
*Plaintiff,*

v.

MICHIGAN DEPARTMENT OF NATURAL RESOURCES; DAVID  
HALES, Director of Michigan Department of Natural  
Resources; ST. CLAIR COUNTY HEALTH DEPARTMENT;  
and JON B. PARSONS, Director of St. Clair County  
Health Department; ST. CLAIR COUNTY METROPOLITAN  
PLANNING COMMISSION, and GORDON RUTTAN, its  
Director; ST. CLAIR COUNTY SOLID WASTE PLANNING  
COMMITTEE and PEG CLUTE, its Chairperson,  
*Defendants.*

---

**Proof of Service**

Kathleen Ireland, being first duly sworn, deposes and  
says that she is an employee of Honigman Miller Schwartz  
and Cohn, and that on the 21st day of April, 1989, she  
served a copy of the following:

1. Plaintiff's Brief in Opposition to Defendants' Mo-  
tions to Dismiss Complaint for Declaratory and  
Injunctive Relief;
2. Plaintiff's Motion for Summary Judgment and  
Brief in Support of Motion for Summary Judg-  
ment;

3. Notice of Hearing on Motion for Summary Judgment; and
4. Proof of Service.

upon the following Counsel of record:

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Attorney for St. Clair County  
Defendants.

St. Clair County Corporation  
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JA24

by first class mail with postage fully prepaid thereon.

/s/

\_\_\_\_\_  
Kathleen Ireland

Subscribed and sworn to before me  
this 21st day of April, 1989

/s/

\_\_\_\_\_  
Notary Public

Sara R. Feldman

Notary Public, Oakland County, Michigan

Acting in Wayne County

My Commission Expires June 20, 1990

JA25

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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File No. 89-CV30015-PH

JUDGE JAMES HARVEY

BILL KETTLEWELL EXCAVATING, INC., d/b/a FORT  
GRATIOT SANITARY LANDFILL, a Michigan corporation,  
*Plaintiff,*

v

MICHIGAN DEPARTMENT OF NATURAL RESOURCES; DAVID  
HALES, Director of Michigan Department of Natural  
Resources; ST. CLAIR COUNTY HEALTH DEPARTMENT;  
and JON B. PARSONS, Director of St. Clair County  
Health Department; ST. CLAIR COUNTY METROPOLITAN  
PLANNING COMMISSION, and GORDON RUTTAN, its  
Director; ST. CLAIR COUNTY SOLID WASTE PLANNING  
COMMITTEE and PEG CLUTE, its Chairperson,  
*Defendants.*

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Robert A. Fineman (P 13425)  
Daniel P. Perk (P 39004)  
Attorneys for Plaintiff

**Answer**

David R. Heyboer (P 27975)  
Co-Counsel for Plaintiff

**Proof of Service**

Robert H. Cleland (P 11964)  
St. Clair County Corporation Counsel  
Attorney for County Defendants



Lawrence R. Ternan (P 21334)  
Co-Counsel for County Defendants

Thomas J. Emery (P 22876)  
Leo H. Friedman (P 26319)  
Nancy K. Wiest (P 35137)  
Assistant Attorneys General  
Attorneys for State Defendants  
Natural Resources Division  
530 W. Allegan Street  
Mason Building, 8th Floor  
Lansing, MI 48913  
(517) 373-7540

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Dated: June 16, 1989

JA27

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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File No. 89-CV30015-PH

JUDGE JAMES HARVEY

BILL KETTLEWELL EXCAVATING, INC., d/b/a FORT  
GRATIOT SANITARY LANDFILL, a Michigan corporation,  
*Plaintiff,*

v

MICHIGAN DEPARTMENT OF NATURAL RESOURCES; DAVID  
HALES, Director of Michigan Department of Natural  
Resources; ST. CLAIR COUNTY HEALTH DEPARTMENT;  
and JON B. PARSONS, Director of St. Clair County  
Health Department; ST. CLAIR COUNTY METROPOLITAN  
PLANNING COMMISSION, and GORDON RUTTAN, its  
Director; ST CLAIR COUNTY SOLID WASTE PLANNING  
COMMITTEE and PEG CLUTE, its Chairperson,  
*Defendants.*

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**Answer**

Defendants Michigan Department of Natural Resources and David Hales, Director of the Michigan Department of Natural Resources, by their attorneys, Frank J. Kelley, Attorney General of the State of Michigan, and Thomas J. Emery and Leo H. Friedman, Assistant Attorneys General, answer the Complaint for Declaratory and Injunctive Relief as follows:

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations.
2. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations.
3. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations.
4. Defendants admit the allegations.
5. Defendants admit the allegations.
6. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations.
7. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations.

COUNT I

8. Defendants incorporate by reference their answers to paragraphs 1 through 7.
9. Defendants admit the first sentence. Defendants admit the landfill is known as the Fort Gratiot Sanitary Landfill, however, they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations.
10. Defendants deny the allegations.
11. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations.
12. Defendants admit the allegations.

13. Defendants deny the first sentence. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

14. Defendants admit the allegations.

15. Defendants admit that the Michigan Department of Natural Resources in litigation before the St. Clair County Circuit Court indicated Kettlewell could not dispose of solid waste originating outside of St. Clair County in violation of the St. Clair County Solid Waste Management Plan. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

16. Defendants admit solid waste is an article of interstate commerce, however, defendants deny the remaining allegations.

## COUNT II

17. Defendants incorporate by reference their answers to paragraphs 1 through 16.

18. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations.

19. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations.

20. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations.

21. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations.

COUNT III

22. Defendants incorporate by reference their answers to paragraphs 1 through 21.

23. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations.

24. Defendants deny the allegations.

WHEREFORE, Defendants Michigan Department of Natural Resources and David Hales, Director of the Michigan Department of Natural Resources, request that the Complaint be dismissed and they be granted such further and additional relief as the Court deems just and equitable.

Respectfully submitted,

FRANK J. KELLEY  
Attorney General

Thomas J. Emery (P 22876)  
Assistant Attorney General

/s/

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Leo H. Friedman (P 26319)  
Assistant Attorney General

Dated: June 16, 1989

JA31

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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File No. 89-CV30015-PH

JUDGE JAMES HARVEY

BILL KETTLEWELL EXCAVATING, INC., d/b/a FORT  
GRATIOT SANITARY LANDFILL, a Michigan corporation,  
*Plaintiff,*

v

MICHIGAN DEPARTMENT OF NATURAL RESOURCES; DAVID  
HALES, Director of Michigan Department of Natural  
Resources; ST. CLAIR COUNTY HEALTH DEPARTMENT;  
and JON B. PARSONS, Director of St. Clair County  
Health Department; ST. CLAIR COUNTY METROPOLITAN  
PLANNING COMMISSION, and GORDON RUTTAN, its  
Director; ST CLAIR COUNTY SOLID WASTE PLANNING  
COMMITTEE and PEG CLUTE, its Chairperson,  
*Defendants.*

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**Proof of Service**

STATE OF MICHIGAN )  
COUNTY OF INGHAM ) ss

Kathryn M. Schneider, being first duly sworn deposes  
and says that on the 16th day of June, 1989, she did  
serve a copy of Answer upon the following:

Robert A. Fineman  
Daniel P. Perk  
Honigman, Miller, Schwartz and Cohn  
2290 First National Building  
First National Building  
Detroit, MI 48226

David R. Heyboer  
Luce, Henderson, Bankson, Heyboer,  
Lane, Burleigh & Currier  
933 Pine Grove Avenue  
Port Huron, MI 48060

Robert H. Cleland  
St. Clair County Corporation Counsel  
201 McMorran Blvd., Suite 301  
Port Huron, MI 48060

Lawrence R. Ternan  
Beier, Howlett, Ternan, Jones,  
Shea & Hafeli  
74 West Long Lake Rd., Ste. 1  
Bloomfield Hills, MI 48013

by mailing the same to said attorneys in properly addressed and stamped envelopes and depositing the same in the United States Mail in Lansing, Michigan.

/s/

---

Kathryn M. Schneider

Subscribed and sworn to before me  
this 16th day of June, 1989

/s/

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Carla S. Lechler, Notary Public  
Ingham County, Michigan  
My Commission Expires 9/5/89



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

Case No. 89-CV-30015PH

HONORABLE JAMES HARVEY

BILL KETTLEWELL EXCAVATING, INC., d/b/a FORT  
GRATIOT SANITARY LANDFILL, a Michigan corporation,  
*Plaintiff,*

v.

MICHIGAN DEPARTMENT OF NATURAL RESOURCES; DAVID  
HALES, Director of Michigan Department of Natural  
Resources; ST. CLAIR COUNTY HEALTH DEPARTMENT;  
and JON B. PARSONS, Director of St. Clair County  
Health Department; ST. CLAIR COUNTY METROPOLITAN  
PLANNING COMMISSION and GORDON RUTTAN, its  
Director; ST. CLAIR COUNTY SOLID WASTE PLANNING  
COMMITTEE and PEG CLUTE, its Chairperson,  
*Defendants.*

---

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County Defendants  
Beier Howlett Ternan Jones  
Shea & Hafeli  
74 W. Long Lake Road, Ste. 1  
Bloomfield Hills, MI 48013

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**Answer to Complaint by St. Clair Defendants**

St. Clair County Health Department, Jon B. Parsons,  
St. Clair County Metropolitan Planning Commission,  
Gordon Ruttan, St. Clair County Solid Waste Committee

and Peg Clute by and through their attorneys, Robert Cleland, St. Clair County Corporation counsel, and Lawrence R. Ternan of Beier Howlett Ternan Jones Shea & Hafeli, P.C., answer Plaintiff's Complaint as follows:

1. In answering Paragraph 1, these defendants neither admit nor deny the allegations contained therein as they do not have sufficient information upon which to form a belief.

2. In answering Paragraph 2, these Defendants neither admit nor deny the allegation contained therein as they do not have sufficient information upon which to form a belief.

3. In answering Paragraph 3, these Defendants admit the Plaintiff is a Michigan corporation and is doing business under the assumed name of Fort Gratiot Sanitary Landfill. As to whether or not the corporation is in good standing, these Defendants neither admit nor deny as they do not have sufficient information upon which to form a belief.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

#### COUNT I

8. These Defendants incorporate by reference its answers to Paragraph 1-7.

9. Answering Paragraph 9, these Defendants admit the allegations contained therein, except to add the additional fact that the stock of the Kettlewell Corporation was sold to a new corporation in July of 1989. That new corporation, Stanwix, Inc., a Michigan corporation, is owned by four out-of-state corporations.

10. In answering Paragraph 10, the allegations contained therein are admitted, except, concerning the license, there was a cease and desist order issued by the St. Clair County Health Department upon the sale of the stock as the purchaser was a new "person" on Act 641, which was required to obtain a new license. The issue pertaining to the license is now on appeal in the Michigan Court of Appeals.

11. In answering Paragraph 11, these Defendants neither admit nor deny the allegations as they do not have sufficient information upon which to form a belief.

12. Admitted.

13. In answering Paragraph 13, these Defendants deny the allegations contained therein as they are mere conclusions and they are untrue.

14. Admitted.

15. In respect to what the MDNR might do, these Defendants are not able to form a belief and make an answer. In regard to the allegations pertaining to St. Clair, these Defendants answer them as follows:

a. Only the St. Clair County Solid Waste Planning Committee has voted on the issue of allowing out-of-county and out-of-state waste at the Fort Gratiot Sanitary Landfill and its decision was not to allow it.

b. Of the named St. Clair County Defendants, only the County Health Department and its Director have any enforcement responsibilities. Those Defendants have no intention to endorse anything but the law as it is in effect in the State of Michigan, which requires any waste from outside of a county to be approved in a County Solid Waste Management Plan. The current Solid Waste Management Plan in effect has not been amended nor has there been a request to amend it. As to any update of the Solid Waste Plan, it is in the process of being prepared and submitted for approval. The final approval on any plan or updated plan is by the Director of the DNR.

c. As to all other allegations contained in this paragraph, these Defendants deny same as they are untrue.

16. In answering allegations in Paragraph 16, they require no answer as they are merit conclusions of law. Specifically, these Defendants deny that Sections 13a and 30(2) of Act 641 are violative of the United States Constitution.

WHEREFORE, these Defendants request this Court to dismiss the Complaint without any relief whatsoever, together with attorney fees and costs.

## COUNT II

17. These Defendants incorporate by reference, their answers to Paragraphs 1-16.

18. In answering Paragraph 18, these Defendants admit an application was filed, and leaves the application to speak for itself without further answer of said allegation.

19. In answering Paragraph 19, these Defendants admit that the Solid Waste Planning Committee rejected the application, but state that it was for the reason of the Solid Waste Planning Committee's policy pertaining to out-of-county waste and other factors. These Defendants affirmatively state that the Solid Waste Committee is an advisory committee only and that it does not have the ability to make a final decision, that decision being left to the Director of the Department of Natural Resources.

20. Answering the allegations in Paragraph 20(a) and (b), these Defendants deny the allegations as they are untrue.

(a) In answering Paragraph 20(a), these Defendants admit that presently the statement is correct, but many circumstances can change landfill capacity. There are several reasons why it is desirable and necessary for the County to have more than one landfill available to it.

(b) In answering Paragraph 20(b), these Defendants deny the allegations contained therein as they are untrue.

21. In answering Paragraph 21 and each of the sub-paragraphs (a), (b), and (c), these Defendants deny the allegations contained therein as they are untrue.

WHEREFORE, these Defendants request this Court to dismiss the Complaint without any relief whatsoever, together with attorney fees and costs.

### COUNT III

22. These Defendants incorporate by reference, their answers to Paragraphs 1-21.

23. In answering Paragraph 23, these Defendants neither admit nor deny the allegations as they do not have sufficient information upon which to form a belief.

24. In answering Paragraph 24, these Defendants deny the allegations contained therein as they are untrue.

WHEREFORE, these Defendants request this Court to dismiss the Complaint without any relief whatsoever, together with attorney fees and costs.

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Robert Cleland (P11964)  
Attorney for St. Clair County  
Defendants  
St. Clair County Corporation Counsel  
201 McMorron Blvd., Ste 301  
Port Huron, MI 48060  
BEIER HOWLETT TERNAN JONES SHEA &  
HAFELI, P.C.

By: 

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Lawrence R. Ternan (P21334)  
Co-Counsel for St. Clair County  
Defendants  
74 West Long Lake Road, Suite 1  
Bloomfield Hills, MI 48013  
Phone: 645-9400

DATED: June 16, 1989

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by mailing the same to them at their respective business addresses as disclosed by the pleadings of record herein, with postage fully prepaid thereon on June 16, 1989.

/s/

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Suzanne Muirhead